

Office Action Summary		Application No.	Applicant(s)
10/501,834		HARRIS ET AL.	
Examiner	Art Unit		
ANGELA BERTAGNA	1637		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 June 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,5,8-13,16-19,29-37,40,43-60 and 103-108 is/are pending in the application.
 - 4a) Of the above claim(s) 1,2,5,8-13,16-19,29-37,40,43-51,60,103 and 104 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 52-59 and 105-108 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No./Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No./Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Status of the Application

1. Applicant's response filed on June 20, 2008 is acknowledged. Claims 1, 2, 5, 8-13, 16-19, 29-37, 40, 43-60, and 103-108 are currently pending. In the response, Applicant amended claims 52, 53, 58, and 59, cancelled claims 61-66, 78, 90, and 102, and added claims 105-108. Claims 1, 2, 5, 8-13, 16-19, 29-37, 40, 43-51, 60, 103, and 104 are withdrawn from consideration as being drawn to a non-elected invention. Newly added claims 105-108 recite a group of nucleotide sequence variants of SEQ ID NO: 1 that have not been previously considered. It is noted that the newly claimed group of nucleotide sequence variants is a smaller and more specifically claimed subset of the groups of nucleotide sequence variants presented in the original claims. Therefore, the following election of species requirement was necessitated by the addition of claims 105-108.

Election/Restrictions

2. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- (i) substitution of a thymine for the cytosine at position 107 of SEQ ID NO: 1,
- (ii) substitution of a guanine for the adenine at position 664 of SEQ ID NO: 1,
- (iii) insertion of an adenine at position 5895 of SEQ ID NO: 1, and
- (iv) deletion of the adenine at position 9689 of SEQ ID NO: 1.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: 105-108.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Each of the different nucleotide sequence variants recited in claims 106 and 108 has a different chemical structure and function. As a result, the four species recited in claims 106 and 108 lack a special technical feature linking them together, and therefore, an election of species requirement is proper.

3. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not

